



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 5227 OF 2025

1. A.K. Gandhi Electronics & Appliances LL,
Reg. Office: Plot No.24 & 25, Great Nag Road,
Unthkhana, Nagpur – 440009.
 2. Sunita Ashokkumar Gandhi, Age-67 years, Occ:
Business, Director/Partner in A.K. Gandhi Electronics
& Appliances LL.
 3. Ashokkumar Ratanlal Gandhi, Director/Partner in A.K.
Gandhi Electronics & Appliances LL (Dead), Thr. LR's
 - 3a. Achal Ashokkumar Gandhi, Age-40 years, Occ: Business.
 - 3b. Yash Ashoikumar Gandhi, Age-35 years, Occ: Business.
- a & b Office at : Plot No.24 & 25, Great Nag Road,
Unthkhana, Nagpur – 440 009.

PETITIONERS

VERSUS

M/s Suresh Associates, Office at : Survey No.253/Ka/2,
16 Km Stone, National Highway No.6, Village Mahalgaon,
Tah. Kamptee, Dist. Nagpur – 441202. Through its Partner
Dharmesh Mukund Ved.

RESPONDENT

Shri N.D. Dawda, counsel for the petitioners.
Shri H.A. Khan, counsel for the respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE ON WHICH ARGUMENTS WERE HEARD : DECEMBER 18, 2025

DATE ON WHICH JUDGMENT IS PRONOUNCED : DECEMBER 23, 2025

JUDGMENT

RULE. Rule is made returnable forthwith and heard finally with consent of the learned counsel for the parties.

2. The petitioners, who are the original defendants in Summary Civil Suit no.466 of 2022 filed by the respondent for recovery, have challenged the order of grant of conditional leave to defend.

3. The respondent has filed the summary suit claiming recovery of Rs.750000/- in which the petitioners had appeared and sought for leave

to defend. By order dated 24.06.2025, the trial Court granted leave to defend subject to deposit of an amount of Rs.750000/- in the Court. The petitioners have challenged this order by way of instant petition.

4. The primary contention canvassed on behalf of the counsel for the petitioners is, the trial Court has categorical recorded in the impugned order that there is triable issue between the parties which can be decided by a full-fledged trial and that the defendants have a substantial defence and therefore the defendants became entitled for unconditional leave to defend. In support of his submissions, he placed reliance on the judgment of the Hon'ble Supreme Court in *B.L. Kashyap & Sons Limited Versus JMS Steels and Power Corporation & Another* [(2022) 3 SCC 294] and the judgment of the Delhi High Court in *GE Capital Services India Versus May Flower Healthcare Pvt. Ltd. & Others* [2012 SCC OnLine Del 4530].

5. Per contra, the counsel for the respondent opposed the petition and submitted that there existed an enforceable debt against the defendants in view of the fact that the defendants had issued a cheque for the amount of dues which was since dishonoured, the plaintiff became entitled for recovery of the amount. He submitted that the defendants have failed to raise any *bonafide* defence in the application for leave to defend and imposition of condition is justified. In support of his submissions, he relied on the judgments of this Court in *National Commodity Clearing Ltd. (NCCL) Versus Dita Comtrade Limited* [Commercial Summary Suit no.32 of 2020], in *Kavita Moreshwar Sor Versus Anjali Vinayakrao Kadam w/o Arjun Shahane* [Writ Petition No.1590 of 2025] and the Division Bench

judgment in ***Rajesh Laxmichand Udeshi @ Bhatia Versus Pravin Hiralal Shah*** [2012 SCC OnLine Bom 2181]. By relying upon these judgments, he submitted that in view of issuance of cheque by the defendants, the liability is acknowledged and imposition of condition is not at all arbitrary.

6. While considering the controversy, it has to be seen that the plaintiff has filed the summary suit seeking recovery of Rs.750000/-. The basis of claim by the plaintiff is the alleged enforceable debt against which the cheque of Rs.750000/- was issued by the defendants. It is pertinent to note that the defendants have categorically disputed the purpose for which the cheque was issued as can be seen from the reply dated 06.09.2022 which was sent on behalf of the defendants to the plaintiff to the notice dated 13.08.2022. This reply notice is part of the documents attached with the plaint. As such, in view of the aforesaid, it becomes clear that there is no undisputed claim with respect to which the summary suit could be filed. The defendants have raised triable issues and a reasonable defence to the extent of seeking leave to defend.

7. The position of law with regard to granting leave to defend is laid down by the Hon'ble Supreme Court in ***B.L. Kashyap & Sons Limited*** (supra). The relevant paragraph from the said judgment being 33, 33.1 and 33.2 are reproduced as under:-

“33. It is at once clear that even though in IDBI Trusteeship, this Court has observed that the principles stated in para 8 of Mechelec Engineers case shall stand superseded in the wake of amendment of Rule 3 of Order 37 but, on the core theme, the principles remain the same that grant of leave to defend (with or without conditions) is the ordinary rule; and denial of leave to

defend is an exception. Putting in in other words, generally, the prayer for leave to defend is to be denied in such cases where the defendant has practically no defence and is unable to give out even a semblance of triable issues before the court.

33.1. As noticed, if the defendant satisfies the Court that he has substantial defence i.e. a defence which is likely to succeed, he is entitled to unconditional leave to defend. In the second eventuality, where the defendant raises triable issues indicating a fair or bona fide or reasonable defence, albeit not a positively good defence, he would be ordinarily entitled to unconditional leave to defend.

33.2. Thus, it could be seen that in the case of substantial defence, the defendant is entitled to unconditional leave; and even in the case of a triable issue on a fair and reasonable defence, the defendant is ordinarily entitled to unconditional leave to defend. In case of doubts about the intent of the defendant or genuineness of the triable issues as also the probability of defence, the leave could yet be granted but while imposing conditions as to the time or mode of trial or payment or furnishing security. Thus, even in such cases of doubts or reservations, denial of leave to defend is not the rule;"

In the wake of enunciation of law in the aforesaid judgment of the Hon'ble Supreme Court, it is clear that once the trial Court records an inference that a triable issue is raised by the defendant, he becomes entitled for unconditional leave to defend. In the instant case, the trial Court has categorically recorded that there are triable issues which can be decided on full-fledged trial and the defendants have a substantial defence. In view of these observations of the trial Court, there was no reason to impose the condition to deposit the entire amount of Rs.750000/-.

8. As regards the judgments relied upon by the counsel for the respondent in ***National Commodity Clearing Ltd. (NCCL), Kavita Moreshwar Sor*** and ***Rajesh Laxmichand Udeshi @ Bhatia*** (supra), the position of law laid down therein is not disputed and the inferences of

granting conditional leave to defend are drawn by the trial Court on the basis of factual circumstances of this case. Although the counsel for the respondent has harped on these judgments to buttress his submission that the imposition of condition in the instant matter is just and proper however, it has to be seen that in view of the specific inference by the trial Court that there is a triable issue and the defendants have raised a substantial defence, the position of law as laid down in ***B.L. Kashyap & Sons Limited*** (supra) needs to be applied in the instant case.

9. In view of the position of law as laid down by the Hon'ble Supreme Court and having regard to the facts of the instant case, particularly the averments in the plaint alongwith the documents, I am of the firm view that the defendants have raised a substantial defence and thus became entitled for grant of an unconditional leave to defend. The order passed by the trial Court imposing condition is thus unsustainable in law and thus needs interference to that extent.

10. Hence, the writ petition is allowed. The order dated 24.06.2025 is modified to the extent of imposing condition of deposit of Rs.750000/- while granting leave to defend. Rule is made absolute in aforesaid terms. No order as to costs.

(PRAFULLA S. KHUBALKAR, J.)